

SUMMARY ANALYSIS OF AMENDED BILL

Author: Leno Analyst: Darrine Distefano Bill Number: AB 2927
 Related Bills: See Prior Analysis Telephone: 845-4142 Amended Date: August 7, 2006
 Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Public Records Disclosure/State Agency Internet Web Sites/Public Information Center

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.

AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

X AMENDMENTS DID NOT RESOLVE THE DEPARTMENTS CONCERNS stated in the previous analysis of bill as amended June 22, 2006.

FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO _____.

X REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED June 22, 2006 STILL APPLIES.

X OTHER – See comments below.

SUMMARY

This bill would require a state agency to include specific information on its web site about requests for copies of public records.

SUMMARY OF AMENDMENTS

The August 7, 2006, amendments make the following changes:

- Removes the provision that required specific information to be disclosed for an individual that was held in custody for the purpose of booking.
- Adds a provision that allows a person to request the Attorney General (AG) to review a state or local agency's denial of or failure to respond timely to a written request to inspect or receive a copy of a public record.
 - The person's request must be delivered to the AG within 20 days of receipt of the agency's written denial, or, if the agency has failed to respond, the person has 20 days and no more than 40 days after the request was made to the agency to seek review from the AG.

Board Position:

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Legislative Director

Date

Brian Putler

8/15/06

- Allows the AG to solicit information from the denying agency, including copies of exempt records or detailed explanation of the content of information in those records. The AG must return or destroy nondisclosable records received after completion of its review. An agency is not required to provide records or information, but failure to do so without adequate justification may be considered in assessing the sufficiency of the agency's written denial under review.
- Under completion of the AG's review, a copy of the opinion must be mailed immediately to the person requesting the review and the denying agency. The AG must make copies of the opinions issued available for public inspection, publish them annually, and make them available on the Internet.
- If the AG provided advice to an agency involving a request to inspect or make copies of records, it would provide a basis for the agency to claim an attorney-client relationship that would preclude the AG from providing an opinion.
- Allows an agency to retain legal counsel, other than the AG, to defend an action brought under provisions of the Public Records Act if the AG has issued an adverse opinion.
- If a person seeks review by the AG, no legal action may be brought against the agency whose decision was subject to review until 10 days after the issuance and mailing of the opinion.
- This provision would not apply to a request for public records made to an agency by a party to a pending legal proceeding involving the agency or employee of the agency, or a pending investigation by the agency, if the AG has provided or is providing legal advice or representation to the agency with respect to that proceeding or investigation.
- Deletes the reimbursement provision for local agencies and school districts if the Commission on State Mandates determines that this act contains costs mandated by the state.

The August 7, 2006, amendments resolve the technical consideration from the June 22, 2006, analysis. The August 7th amendments result in one new implementation consideration that is provided below. An additional implementation consideration that was not addressed in the previous analyses has also been provided below. The department has determined that the Google search engine implementation concern is no longer applicable and has removed that concern. The remaining implementation and technical considerations from the June 22, May 26, and April 17, 2006, analyses are repeated below for convenience as well. In addition, the Fiscal Impact has been revised to reflect the technology equipment required for implementation. The remainder of the bill as amended April 17th still applies.

POSITION

Pending.

ANALYSIS

IMPLEMENTATION CONSIDERATIONS

This bill would have a significant impact upon the department. The department has identified the following implementation concerns. Department staff is available to work with the author's office to resolve these concerns.

Concerns from the August 7, 2006 analysis:

It is unclear whether "denial of a written request to inspect or copy a public record" intends to limit the AG to review of an agency's decision to exempt a particular document or portions of a record or if the language intends to be broader in scope. For example, an agency can and often does receive broadly worded requests for documents. The agency provides specific documents after due diligence in examining all records available. Under this bill the requester could then seek AG review of the agency's PRA response, claiming the agency failed to perform an adequate review of its records. The author may wish to clarify these terms to avoid confusion and ambiguity.

Under "Records Disclosed This Year," a "copy of the requester's own description of the records that were disclosed" must be posted to the web site. The requester may provide an inaccurate description of the records disclosed. The author may wish instead to allow the agency to post its own description of the records disclosed on the web site and sent to the requester.

Remaining concerns from the June 22, 2006 analysis:

Although the bill changes the timeframe from five business days to 10 calendar days for posting items to the web site, it would be difficult for the department to meet the 10 calendar day requirement without additional personnel. Department staff would need to redact confidential, proprietary, and privileged information before any items can be posted to the web site. The agencies have a reasonable amount of time to produce the responsive records, depending on the volume of the records, to meet the request currently under the PRA. The author may wish to revise the bill to be consistent with the provisions already under the PRA.

The requirement that information be posted on the department's web site would be problematic when the 10th calendar day falls on a weekend or holiday. Most state agencies are closed on weekends and holidays. It is recommended that the bill be amended expressly to exclude weekends and holidays.

During the tax season of January through May, the principal contact for taxpayers is through the department's web site. The department must post information timely to the web site for taxpayers to file their tax returns on time. It may be difficult for the department to meet the requirements of the bill and maintain the web site for tax season.

It is unclear what type of contracts for "individual's services" needs to be posted under "Officials Employment or Consulting Contracts." To comply with this provision, the department would post consulting contracts where individual services are provided to the department such as recommendations to improve a business process or purchasing a particular product. These

contracts typically list the individual who is providing the service. If the author's intent is different, it is suggested that the bill be amended to expressly describe the type of contracts to be posted to the web site.

Under the provision that describes the HTML form, it is unclear why the bill requires a copy of the request to be sent back to the requester instead of an acknowledgement of receipt.

Remaining concern from the May 26, 2006 analysis:

The amendment adds the term "without inspection," to the "Send me copies of the records" field on the HTML request form. This term is ambiguous because some records are exempt from disclosure by law and the department is required to inspect (review) and redact records for confidential, proprietary, and privileged information before those can be sent to the requester. As written, the department would be unable to "send copies of the records without inspection" as required under this bill. If this interpretation is contrary to the author's intent, it is suggested that the term be clarified.

Remaining concerns from the April 17, 2006 analysis:

The statement of economic interests requires state and local government officials and employees to disclose personal assets and income publicly. The statement also includes an employee's full name, address, phone number, and e-mail address. This statement can currently be requested under the PRA. However, disclosure of personal information of this nature via the Internet would potentially expose government employees required to file the statement to increased potential for threats, harassment, and identity theft. Because this information is available to the public when requested, the author may wish to remove this provision to eliminate this concern.

This bill could result in abuse by frivolous activity non-filers. Many requests for records received by FTB are from persons who object to the concept of the state income tax. Requests from such taxpayers are made to waste state resources and to direct FTB personnel away from tax collection duties. The author may wish to add a provision that limits requests made in bad faith and solely to abuse the process. It is also recommended that agencies be allowed to post only the first 10 pages of the requester's request, letter, or other communication to maintain space on computer servers.

It is unclear if the provision requiring a copy of every record disclosed without redaction means only documents released without redaction or all documents regardless of what was redacted. Most PRA records are over 10 pages and would not be posted. The department would interpret this language to mean that only documents that have been redacted will be posted to the web site. If the author's intent is different, it is suggested that the bill be amended expressly to identify the type of redacted records that are to be posted to the web site.

The PRA currently requires an interactive process between the requester and a state agency to clarify, assist, and identify appropriate records. FTB's Disclosure Section ensures the administration of the PRA is carried out by working with a requester if the description of a record is unclear. Under this bill, it appears that the requester could remain anonymous for requests made on the web site. Anonymity of the requester could frustrate the current interactive process

in conflict with the PRA. The author may wish to remove the term “optional” from the labeled fields on the HTML form.

Because the bill would make the requester’s postal address and phone an optional field on the HTML form used to request documents, it might be difficult or impossible for the department to contact the requester to clarify the request or send paper copies of records. In addition, if the requester only provides an e-mail address, there may be limitations placed by the requestor’s Internet Service Provider (ISP) on e-mail size. To ensure the department is able to provide requested records, the HTML form should require the requester’s postal address.

It is unclear if the department could make some corrections to the original request for records for clarity purposes before posting the request to the web site or if the request must be posted as originally written. The author may wish to amend the provision to allow agencies the option of making corrections to the original request for clarity purposes.

The term “Public Information Center” could cause confusion for taxpayers that use FTB’s web site. This link could appear to taxpayers as a quick link specifically for tax information. The department has conducted usability tests in the past and found that the term “center” could imply anything from a repository to a physical structure. The author may wish to use a term such as “Public Record Requests” or something similar to clearly identify for the public the link to request public records.

This bill would require the department to post a copy of original requests and requested records on the department’s web site. Depending on the document type, the document may need to be scanned for posting on the department’s web site. The scanned document may result in a situation where a person who relies on optical character recognition software (screen readers) could have difficulty hearing the record. In this instance, that person would need either to contact the department directly for a paper copy of the requested record or print their own copy.

The bill specifies that the form must be designed using the HTML format. This would restrict the use of alternative or future technology. Requiring agencies to maintain a format that is obsolete could cause complications and increase costs. The author may wish to amend the provision to specify HTML, alternate, or successor technology.

TECHNICAL CONSIDERATIONS

Concern from the May 26, 2006 analysis:

The author may wish to insert the word “public” in front of “record” so that requests for records under the Information Practices Act (IPA) are directed appropriately. The IPA pertains to an individual’s personal information collected and maintained by an agency. This information can only be disclosed under specified circumstances and usually only to the specified individual.

FISCAL IMPACT

The department would need additional personnel to meet the specified timeframes and respond to requests under this bill. The additional personnel, along with existing staff, would also be required to do the following: create the online form, conduct usability testing, conduct focus group research to identify the best link text and most effective search terms, analyze requests, redact and post requester's documents, update other documents as required to be filed under this bill, and maintain the web page. The department would also require additional equipment for storage, security, verification of email addresses, and programming.

The department's costs are anticipated to be approximately \$417,096 for equipment, two personnel years (PYs) in the Disclosure Section, one new PY in Electronic Services Section, and one new PY in the Legal Department.

Amendment 1 is provided to suggest appropriation language to fund the department's costs.

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FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO AB 2927
As Amended August 7, 2006

AMENDMENT 1

SEC. 7. The sum of four hundred seventeen thousand ninety-six dollars (\$417,096) is hereby appropriated to the Franchise Tax Board in augmentation of its support budget (Item of the Governor's Budget - Chapter ____, Statutes of ____).